

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-5909

PETITION OF JODIE LONGO
(Hearing held September 10, 2003)

OPINION OF THE BOARD
(Effective date of Opinion, October 14, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(2). The existing single-family dwelling requires a variance of 4.25 feet as it is within 15.75 feet of the rear lot line and the proposed construction of a second-story addition requires a variance of 4.25 feet as it is within 15.75 feet of the rear lot line. The required rear lot line setback is twenty (20) feet.

Dejan Bujak, the petitioner's husband, represented the petitioner at the public hearing.

The subject property is Lot 47, Block I, Homewood Subdivision, located at 3122 Homewood Parkway, Kensington, Maryland, 20895, in the R-60 Zone (Tax Account No. 001207547).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a second-story addition to the existing residence.
2. The petitioner testified that the existing residence is located in the rear yard setback and that only the southwest corner of the new construction extends into the rear yard setback. The petitioner testified that the addition would have the same dimensions as the footprint of the existing house. See, Exhibit No. 5 (site plan).
3. The petitioner testified that two-story homes are a common characteristic of the neighborhood and that the addition's design will be in harmony with the other neighboring homes. The petitioner testified that his house is sited lower than the neighboring homes and that his neighbors support the variance request. The total square footage of the petitioner's lot is 5,314 square feet.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner's lot is 5,314 square feet. The standard lot size for the R-60 Zone is 6,000 square feet. The existing residence is currently located in the rear yard setback and the proposed addition will not expand the footprint of the existing structure. The Board finds that these are exceptional circumstances that are peculiar to the property and that the strict application of the regulations will result in practical difficulties for the property owner.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the existing residence and the construction of a second-story addition are the minimum reasonably.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The proposed addition will be sited lower than the neighboring homes and will be in harmony with other improvements in the immediate area. The Board finds that the variances will not be detrimental to use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of 4.25 feet from the required twenty (20) foot rear lot line setback for the existing single-family dwelling and of 4.25 feet from the required twenty (20) foot rear lot line setback for the construction of a second-story addition are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such

evidence and representations are identified in the Board's Opinion granting the variances.

2. Construction must be completed according to plans entered in the record as Exhibit Nos. 5 and 6(a) through 6(f).

The Board adopted the following Resolution:

Be it resolved by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Board member Donna L. Barron was necessarily absent and did not participate in this Resolution. On a motion by Angelo M. Caputo, seconded by Allison Ishihara Fultz, with Louise L. Mayer and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 14th day of October, 2003.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.